No. 80-1520

In the Supreme Court of the United States

LINDA E. SANGSTER,
Petitioner,

vs.

UNITED AIR LINES, INC.,
a Delaware Corporation and
Airline Pilots Association, International,
a labor organization,
Respondents.

Brief of United Air Lines, Inc. In Opposition

DONALD D. CONNORS, JR.
JAMES L. MEEDER
Attorneys for Respondent United Air Lines, Inc.

Of Counsel:
BROBECK, PHLEGER & HARRISON
Spear Street Tower
One Market Plaza
San Francisco, California 94105
(415) 442-0900

BORG PRINTING COMPANY OF CALIFORNIA, 346 FIRST STREET, SAN FRANCISCO 94105

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STATEMENT OF THE CASE

On November 24, 1961 Linda E. Sangster was hired by United Air Lines, Inc. ("United") as a stewardess. On May 28, 1966 she was promoted to a higher paying job of stewardess supervisor. On April 9, 1968 Sangster married a United pilot and continued her employment as a stewardess supervisor. She later wanted to return to her stewardess job, but was ineligible to do so because of United's "no marriage" rule. On July 16, 1969 Sangster voluntarily quit her job as a stewardess supervisor. (Tr. 126.)[1]

Seven years later, on November 1, 1976, Sangster filed a Title VII action in the United States District Court for the Northern District of California.

1. "Tr....." refers to the Trial Transcript and page.

A trial was held on the issues of back pay and attorney's fees on November 2, 1977.[2] On November 15, 1977, judgment was entered denying Sangster any monetary relief and awarding attorney's fees against the defendants in the sum of $5,537.00.

The District Court explained its judgment at the close of trial as follows:

> "There is a strong policy favoring awards of back pay and the finding of an unfair labor practice and discriminatory discharge is presumptive proof that some back pay is owed by the employer: Albemarle Paper Company Versus Moody, 422 U.S. 405.
>
> "And the burden is on the defendants to prove unreasonable failure to mitigate. Once the gross amount of back pay owing is calculated, the burden shifts to the defendant to prove what should be deducted therefrom as interim earnings or amounts capable with reasonable diligence. Defendants' burden of proving lack of diligence is not satisfied merely by showing . . . that there were further actions which plaintiff could have taken in pursuit of the employment. Rather, the defendant must show that the course of conduct plaintiff actually followed was so deficient as to constitute an unreasonable failure to seek employment.
>
> "The range of reasonable conduct is broad and the injured plaintiff must be given the benefit of every doubt in assessing her conduct." (Tr. 126-27.)

The District Court proceeded with a detailed review of the evidence (Tr. 127-129) and then pronounced this judgment:

> "The Court then finds that the plaintiff did not mitigate her damages, has not sought to mitigate her damages, and, therefore, is not entitled to any recovery for back pay."

(Tr. 129.)

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2. Liability and reinstatement were decided by motion for partial summary judgment, which motion was unopposed by United. *Sangster v. United Air Lines, Inc.*, 439 F.Supp. 1221, 1223 (N.D. Cal. 1977).

In affirming the District Court's judgment, the Ninth Circuit made the following observations on the evidence of Sangster's efforts to find other employment after she voluntarily quit her job as a supervisor:

> "She had remained unemployed for eight years between the day she voluntarily quit her job and the time United was ordered to restore her to her position as stewardess with full seniority. She admitted that she did not seek work with another airline after leaving United, either as a stewardess or in a supervisory or other capacity. Her efforts at obtaining other positions were minimal."

Sangster v. United Air Lines, Inc., 633 F.2d 864, 866 (1980).

The Ninth Circuit also found much significance in the fact that Sangster had quit *substantially equivalent employment* when she voluntarily resigned her job as a supervisor:

> "Sangster was not entitled to remain idle for eight years after quitting substantially equivalent employment. . . . We conclude that Sangster did not meet her duty to mitigate her damages, and that denial of back pay under the circumstances would not frustrate Title VII's remedial purposes."

633 F.2d at 868. In short, Sangster willfully incurred back pay losses when she voluntarily quit her higher paying job as a supervisor and then made no meaningful effort to find other employment.

ARGUMENT

A. The Decision Below Is Not in Conflict With Any Other Court Decisions; the Decision Turns on the Facts Presented at Trial

The Ninth Circuit below summarized the law concerning a Title VII complainant's willful loss of earnings this way:

> "The back pay provision [of Title VII] was expressly modeled on the backpay provision of the National Labor Relations Act." *Albemarle Paper Co.*, 422 U.S. at 419, 95 S.Ct.

> at 2372. Under the NLRA, courts have long held that back pay is not to be awarded when the evidence shows a willful loss of earnings. *Phelps Dodge Corp. v. NLRB,* 313 U.S. 177, 198, 61 S.Ct. 845, 854, 85 L.Ed. 1271 (1941). Developed from this general concept, the more specific acts which constitute such willful conduct are: failure to remain in the labor market, refusal to accept substantially equivalent employment, failure diligently to search for alternative work, or voluntarily quitting alternative employment without good reason. *NLRB v. Mastro Plastics Corp.,* 354 F.2d 170, 174 n.3 (2nd Cir. 1965), *cert. denied,* 384 U.S. 972, 86 S.Ct. 1862, 16 L.Ed.2d 682 (1966)."

633 F.2d at 868.

Sangster, in quitting her higher paying job and then making no meaningful attempt to find other employment for eight years, willfully incurred her loss of income. It was this willful loss of earnings and general slothful conduct that controlled the outcome of this case—not some unspecified departure from unidentified Circuit and Supreme Court decisions.

B. The Court Does Not Grant Certiorari to Review Evidence and Discuss Specific Facts

Obviously, petitioner is unhappy with the lower court's determinations that she willfully incurred back pay losses, and that her own idleness bars any recovery. But a litigant's unhappiness with a finding of fact does not constitute a reason for granting certiorari. The Court is simply not in the business of reviewing evidentiary determinations:

> "We do not grant a certiorari to review evidence and discuss specific facts."

United States v. Johnston, 268 U.S. 220, 227 (1925). In *Graver Mfg. Co. v. Linde Co.,* 336 U.S. 271, 275 (1949), the Court put it this way:

> "A court of law, such as this Court is, rather than a court for correction of errors in fact finding, cannot undertake to

review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error."

Here, there is simply no such error.

CONCLUSION

This is a case in which the facts were determinative of the outcome. Those facts, baldly stated, are these. Sangster quit her higher paying job of stewardess supervisor because she could not have the lesser job as stewardess. For eight years she sought no employment, including employment as a stewardess, even though such work was available (633 F.2d at 868). She seeks reimbursement for those eight years of idleness. Of course the reimbursement was denied below.

We urge that the petition should be denied.

Respectfully submitted,

DONALD D. CONNORS, JR.
JAMES L. MEEDER

Attorneys for Respondent
United Air Lines, Inc.

Of Counsel:

BROBECK, PHLEGER & HARRISON
Spear Street Tower
One Market Plaza
San Francisco, California 94105
(415) 442-0900